[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

December 18, 1938.

PUBLIC PROSECUTOR v. HO AH LOKE

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 86 of 1938]

Sanitary Board By-laws, Part IX By-law 2—Sanitary Boards Enactment (Cap. 137) S. 2—Interpretation and General Clauses Enactment (Cap. 1) S. 4—using hoardings without license—interpretation of "house".

A picture theatre is a "house" as defined in the Sanitary Boards Enactment and hoardings displaying advertisements of films being exhibited or about to be exhibited at the theatre and not projecting over a street are signboards affixed to a house within the definition given in By-law 1 of the By-laws made under the Enactment, and are therefore exempted under By-law 7 from being licensed—under By-law 2.

MAGISTRATE'S CRIMINAL APPEAL.

J. F. Draper, D.P.P. for the Appellant.

S. M. Yong for the Respondent.

Cur. Adv. Vult.

Terrell, Ag. C.J.—The respondent was charged with using hoardings for the exhibition of advertisements without a licence as required by By-law 2 Part IX of the Sanitary Board by-laws.

The hoardings in question were advertisements of films being exhibited, or about to be exhibited, at the Odeon Theatre Kuala Lumpur.

In By-law 1 of Part IX hoarding is defined as including several things, and one of such things is "a signboard". A signboard is defined as follows:—

> "Sign-board" means a hoarding fixed to a house for the purpose of advertising the name of a person or a firm carrying on any trade or business within such house, or the nature of the trade or business so carried on.

Under By-law 2 hoardings generally have to be licensed, but under by-law 7, signboards not projecting over a street are exempted from the operation of By-law 2.

It is not disputed that these particular hoardings do not project over a street; accordingly, if they can properly be described as 'signboards' within the definition, they are exempt.

The learned Deputy Public Prosecutor submitted that before a hoarding can fall within the definition of 'signboard', it has to be shown that three conditions have been complied with:—

(1) It must be fixed to a house;

(2) It must be so fixed for the purpose of advertising the name of a person or firm carrying on a trade or business within such house; or

(3) For the purpose of advertising the nature of the trade or business so carried on.

Conditions (2) and (3) are clearly in the alternative. There can be no doubt that in the case of these particular hoardings, (2) does not apply, as the names of the persons carrying on the picture-house are not mentioned. I think, however, that condition (3) has been complied with. The advertisement of current or coming attractions surely advertises to all the world that a cinema is being shown within the building. Accordingly these hoardings advertise the nature of the business being carried on inside.

The only question, therefore, that remains for decision is whether the Odeon Theatre is a 'house'.

Now, 'house' is not defined in the by-laws, but it is defined in the Sanitary Boards Enactment (Cap. 137) section 2 in the following terms:—

> " 'House' includes dwelling house, warehouse, office, counting house, and shop, also schools and any other buildings in which persons are employed;"

and under section 4 of the Interpretation and General Clauses Enactment (Cap. 1), when terms defined in any Enactment are used in any Rules, such terms shall have the meaning assigned to them in the Enactment unless they are otherwise defined in the Rules or such meaning is inconsistent with the subject or context. As the word 'house' is not defined in the Rules, and as there is no apparent inconsistency, I conclude that the word 'house' in by-law 2 should be given the meaning set out above.

Now it will be seen that the word 'house' is said to 'include' things—that is to say, it means not only 'house' in its ordinary interpretation, but various other buildings which would not ordinarily fall under the definition of house. The word 'includes' therefore extends and does not restrict the ordinary meaning of the word. Among the meanings included in the definition is 'any other building in which persons are employed, and *prima facie* this would cover a picture theatre, since people are necessarily employed there for the various purposes connected with a cinema production. It is argued, however, that the meaning of the general words must be restricted by virtue of the *ejusdem generis* doctrine. By this it is meant that general words coming after particular words are restricted to and controlled by the meaning of the particular words (*Attorney-General v. Brown,* (1920) 1 K.B. p. 772, *per* Sankey J. at page 797).

Much learning has been devoted to attempts to define the scope and limitations of the *ejusdem generis* doctrine. As McCardie J. justly remarked in *Magnhild (S.S.) v. McIntyre Bros.* 1920, 3 K.B. at page 326, "The risk seems to be that the rule may develop into a juristic fetish". Fortunately I do not find it necessary to refer to the various authorities, as it has clearly been established that before the doctrine can be applied, there must be a common genus in the particular words (see *per* Vaughan Williams L.J. in *Tillmanns v. S. S. Knutsford* 1908, 2 K.B. page 385 at page 395). In the definition of 'house' as defined in the Enactment I look in vain for any genus or category. 'House' as defined in the Enactment includes a 'dwelling house' *i.e.* a place where people live and sleep, 'warehouse, office and counting house' *i.e.* places where people are employed, 'shop' *i.e.* a place where some people are employed and may or may not live, and 'schools' where some people are employed and others attend for instruction. Even if a common category could be found, the *ejusdem generis* rule could only be applied if the particular words were followed by a general expression such as 'any other building', but where, as in the definition of house, the general words are 'any other building in which persons are employed', these words are not restricted by the particular words preceding, but provide a fresh category, which applies to and the general words should be interpreted in their usual and ordinary meaning, unrestricted by any legal theory, and so interpreted, clearly cover a picture theatre.

I find, therefore, that the Odeon Theatre is a 'house' as defined in the Sanitary Boards Enactment, that the advertisement hoardings complained of are signboards affixed to a house within the definition given in By-law 1, and that accordingly these particular signboards are exempted under By-law 7 from the necessity of being licensed under By-law 2.

In my opinion, therefore, the decision of the learned Magistrate was correct, and the appeal will be dismissed.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

HAJI MOHAMED IDRIS v. GRENIER.

[SELANGOR CIVIL SUIT No. 151 of 1937]

Land Code (Cap. 138) S. 55—unregistrable transfer—construction—implied covenant.

Plaintiff and his wife (since deceased) were the registered proprietors of 2 pieces of land in Kuala Lumpur and each of them was entitled to one undivided half-share. Subsequently by an indenture made between the plaintiff, his wife and the defendant (hereinafter referred to as "the trustee") the plaintiff and his wife purported to transfer the land to the trustee upon certain trusts for the benefit of the transferors as therein mentioned, one of such trusts being that from the death of either of them, the plaintiff and his wife, the trustee shall stand possessed of the lands upon trust to convey the whole thereof to the survivor absolutely. The transfer was not in the form required by the Land Code and was never registered. Before her death the plaintiff's wife and the plaintiff executed a charge of the said lands in favour of one L.Y.C. The plaintiff's wife died, having made a will by which she appointed the plaintiff and the defendant to be executors and bequeathed the residue of the estate to the plaintiff absolutely. Probate was granted to the defendant, the plaintiff having renounced. A year after his wife's death the plaintiff asserted his claim to the half share of his wife in the said lands and did so on several occasions subsequently. In 1937 the plaintiff commenced this action praying for a declaration that he was the owner of the two pieces of lands. The material defence put forward by the defendant was that the gift to the trustee was never completed and was incapable of being enforced.

Held, on the construction of the document of transfer, that a contract by the deceased and by the plaintiff to give effect to the common intention after her or his death could be implied and that such contract was binding on the conscience of the parties and could be given effect to without infringing the principles of the Land Code.

CIVIL SUIT.

W. G. W. Hastings (*M. N. Cumarasami* with him) for the plaintiff.

Tan Teow Bok, for the defendant.

Cur. Adv. Vult.

Terrell, Ag. C.J.—In or about the month of April 1926 the plaintiff and his wife Haji Saida (since deceased) became the registered proprietors of two pieces of land in the town of Kuala Lumpur comprised in Certificates of Title Nos. 2114 and 2115, and now held under Selangor Grant Nos. 9419 and 9420, that is to say, each of the registered proprietors was entitled to one undivided half-share.

On the 27th of July 1926 by an Indenture made between the plaintiff of the first part, Haji Saida of the second part, and the defendant (thereafter called the trustee) of the third part, the plaintiff and the said Haji Saida purported to transfer the said two pieces of land to the trustee upon certain trusts for the benefit of the transferors as therein mentioned. One of such trusts was that from and after the death of either of them, the plaintiff and the said Haji Saida, the trustee should stand possessed of the said lands upon trust to convey the whole thereof to the survivor absolutely. This transfer was not in the form required by the Land Code, and was never registered. In fact